

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.02.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.13238 of 2003

1. G.Subramanian (died)
2. Mrs.Rani,
3. Manivannan
4. Sudarvannan
5. Muthammal

...Petitioners

Petitioners 2 to 5 are substituted in the place of deceased first petitioner, as per order, dated 06.01.2016, in W.P.M.P.No.120 of 2015 of this W.P.

Vs.

1. The Presiding Officer,
Labour Court, Cuddalore.
2. The Management,
Social Forestry Department,
No.41, Poonthottam Pettai Street,
Villupuram.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the records in I.D.No.82 of 1998, on the file of the first respondent, dated 18.12.2001, and to quash the same.

For Petitioner : Mr.R.Muralidharan

First Respondent : Labour Court

For 2nd Respondent : Mr.N.Inbanathan

Government Advocate (Forest Dept.)

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O R D E R

The original petitioner is one Mr.G.Subramanian, who has filed this Writ Petition, challenging the award of the Labour Court, Cuddalore, in I.D.No.82 of 1998, dated 18.12.2001. The said petitioner died on 23.04.2013, for which, the present petitioners 2 to 5 have been brought on record as his legal representatives.

2. The deceased first petitioner is the workman and the second respondent/employer is the Forest Department, and they shall be referred as such, throughout this judgment and order.

3. The workman raised a dispute before the Labour Court, contending that he had joined the service of the Forest Department as Gardener on 01.01.1985, and he was continuously working as Gardener, on daily wage basis till 31.03.1997. The workman stated that there was a Government Order, by virtue of which, he is entitled to a sum of Rs.803/- per month from 01.04.1997. However, this was denied, yet, the workman is stated to have continued in employment, receiving lesser salary. The workman has made Provident Fund contribution, in account No.805 from 1992 to 1993 onwards, and 10% has been deducted from his salary, and the Forest Department has also made a contribution, liable to be paid by them. The workman's claim was that, he has completed 480 days of continuous employment, and he is entitled for being regularized in service as permanent employee of the Forest Department, and without doing so, orally, he has been rejected employment from 04.12.1997.

4. In the counter statement filed by the Forest Department before the Labour Court, it was admitted by them that the workman was employed on daily wage basis, but, they took a stand that the workman, on his own volition, did not report for duty from 01.04.1997. Further, in the counter statement, it is admitted that, during the period, when the workman was working as daily wage employee, 10% was deducted from his salary towards the Provident Fund contribution.

5. Before the Labour Court, the workman examined himself as W.W.1, and marked three documents, viz., Ex.W.1/service certificate, dated 26.04.1993, Ex.W.2/interview card, dated 20.04.1993, and Ex.W.3/Conciliation failure report, dated 7.4.1998. The Forest Department did not lead any oral or documentary evidence.

6. The Labour Court framed only one point for consideration, Whether the workman is entitled to be reinstated in service along with backwages, as claimed by him?

7. The Labour Court, after noting the fact, the discussion as in paragraph No.8 of the award while accepting the aforesaid three documents filed by the workman, rendered a finding that those documents are not helpful to his case, for proving his continuous employment for more than 240 days. The error committed by the Labour Court is on account of the fact that it failed to take note that the Forest Department has admitted in their counter that the workman was employed as a daily wage employee, and he worked till 01.04.1997. According to the Forest Department, the workman failed to report for duty

on his own volition, whereas, it is the case of the workman that he was orally denied employment. Thus, the fact that the workman worked till 01.04.1997, has not been disputed by the Forest Department. In such circumstances, the Labour Court ought to have examined as to effect of the service certificate, dated 26.04.1993, which certifies that from 1985, he has been in employment. However, the Labour Court, without considering the said certificate, by a single line, opined that all three documents produced by the workman are not acceptable.

8. The learned counsel appearing for the workman, during the course of arguments, produced four other documents, and those are all extracts of the accounts, showing the deduction of Provident Fund contribution from the workman's salary as well as the share paid by the Forest Department. It may be true that these documents were not exhibited before the Labour Court, nevertheless, the Labour Court failed to take note of the admission in the counter statement, wherein, the Forest Department, themselves, have admitted that the workman was in employment till 01.04.1997. Therefore, these documents can be looked into, from which, it is clearly seen that there has been deduction made from the workman's salary, and the contribution made by the workman towards his Provident Fund was for the period 1992-93, 1993-94, 1995-96 and 1997-98. In this regard, it is worthwhile to refer to the decision referred by the learned counsel appearing for the workman, in the case of (Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari) reported in A.I.R. (2005) S.C. 2799. In the said case, the workman had produced three vouchers to show that he has been working as a driver for the relevant period, which comes to more than 240 days. As against those three vouchers, the appellant/Bank did not produce any evidence, and it remained contented by filing a written statement, wherein, it denied the claim of the workman, and took a plea that the employment of such drivers under the scheme by which they are, in reality, employee of the Executive concerned, and not that of the Bank, and that, their employment comes to end with the Executive's retirement. Further, it was pointed out that, no evidence was led to establish that the vouchers produced by the workman were not either genuine, or, did not pertain to the wages paid to the workman. Finally, it was held that the termination of services of the workman was contrary to the provisions of the Act. This decision would squarely apply to the facts of the case on hand, and one more additional fact in favour of the workman is that, the Forest Department, in their counter statement, accepted that the workman was in employment till 01.04.1997. That apart, the workman's salary certificate also certifies the workman was in employment for more than 5 years. The documents placed before this Court show the deduction of Provident Fund contribution from the workman's salary from 1992-93, 1993-94, 1995-96 and 1997-98. Therefore, this Court has no hesitation to hold that the impugned order is

utterly perverse, and has been passed, without proper appreciation of documentary evidence placed on record and devoid of reasons.

9. For all the above reasons, the impugned award is set aside. Now, coming to the relief portion, normal consequences would be that the workman has to be reinstated with continuity of service with backwages and attendant benefits. Unfortunately, the workman is no more, and he has left behind him, spouse, two sons, and his mother. It is stated by the learned counsel appearing for the deceased workman that his two sons are unemployed, and are aged about 24 and 21 respectively. The workman's wife is aged about 48 years, and she is not educated. Therefore, if the order of reinstatement with all benefits is to be extended notionally, the workman had to be reinstated in service, and all the monetary benefits should be granted to him, which would also entitle his spouse to get family pension. Therefore, the Forest Department is given two options, either, they should offer employment to any one of the sons of the workman, or, if the said option is not acceptable to the Forest Department, then, the workman shall be notionally reinstated, and the arrears of salary and pension, which the workman is legally entitled to under the relevant rules, shall be paid to his spouse. The aforesaid exercise shall be complied with by the second respondent-Forest Department within a period of four months from the date of receipt of a copy of this order.

10. In the result, the Writ Petition is allowed on the aforesaid terms. No costs.

sd/-
Assistant Registrar (Cs-VII)

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Sub-Assistant Registrar

sd

To

1. The Presiding Officer,
Labour Court, Cuddalore.
2. The Divisional Forest Officer,
Social Forestry Department,
No.41, Poonthottam Pettai Street,
Villupuram.

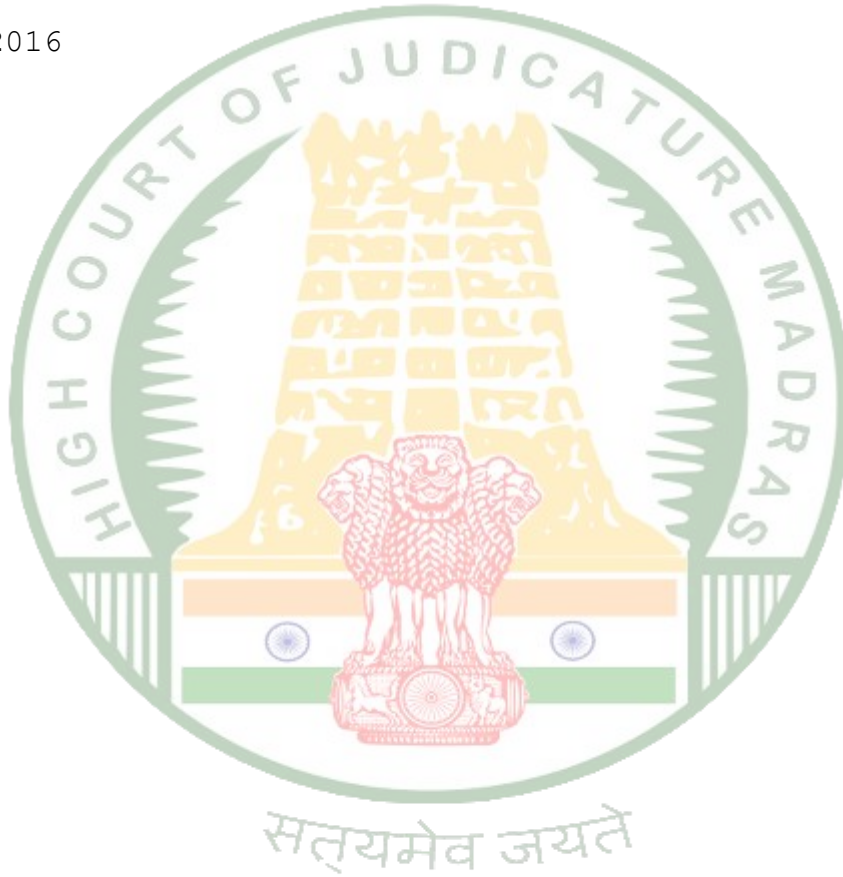
3.The Section, Officer,
VR Section,
High Court, Madras

[31/05/2016]

+1 CC to MR.R.Muralidharan Advocate. SR.NO. 7437
+1 CC to Special Govt.Pleader(Forest). SR.NO.7153

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